

# **CLAY COUNTY CIRCUIT AND SUPERIOR COURTS**

## **LOCAL COURT RULES (Effective January 1, 2007)**

### **TABLE OF CONTENTS**

<b>LR11-FL-00-1</b>	<b>INDIANA PARENTING TIME GUIDELINES.....</b>	<b>2</b>
<b>LR11-FL-00-2</b>	<b>DISSOLUTION PARENTING CLASSES.....</b>	<b>2</b>
<b>LR11-CR12-1</b>	<b>ASSIGNMENT AND REASSIGNMENT OF CRIMINAL CASES.....</b>	<b>3</b>
<b>LR11-CR-00-1</b>	<b>MINIMUM CRIMINAL BAIL SCHEDULE.....</b>	<b>4</b>
<b>LR11-JR2-1</b>	<b>JURY SELECTION AND JURY ADMINISTRATOR.....</b>	<b>5</b>
<b>LR11-TR5-1</b>	<b>SERVICE OF PROCESS.....</b>	<b>5</b>
<b>LR11-TR5-2</b>	<b>PLEADING FILINGS.....</b>	<b>5</b>
<b>LR11-AR15-1</b>	<b>COURT REPORTER SERVICES</b>	<b>5</b>
<b>LR11-PR</b>	<b>PROBATE RULES.....</b>	<b>8</b>
<b>LR11-AR-1</b>	<b>REPEAL OF LOCAL RULE REGARDING SMALL CLAIMS</b>	<b>14</b>

## **LR11-FL-00-1      INDIANA PARENTING TIME GUIDELINES**

The Indiana Supreme Court has adopted the Indiana Parenting Time Guidelines as of March 31, 2001, and those guidelines supersede the previously promulgated Clay Circuit Court and Clay Superior Court Visitation Guidelines. Further the Clay Circuit Court and Clay Superior Court will utilize the Parenting Time Guidelines in actions for Dissolution of Marriage, in actions for Child Custody, in actions for Paternity, and any post-judgment actions involving any of the three.

## **LR11-FL-00-2      DISSOLUTION PARENTING CLASSES**

1. The Clay Circuit and Superior Courts shall not conduct final hearings nor approve waivers of a final hearing in dissolution of marriages in which there are unemancipated children until both parties have filed an affirmation that each of them and all unemancipated children age six or older have successfully attended the Effective Parenting for Divorcing Couples Program conducted by Kirkman and Associates or its pre-court approved equivalent.
2. The Clay Circuit and Superior Courts shall not conduct any post-dissolution hearings on modification of custody or visitation and affidavits charging contempt of court based upon visitation until the requirements in Rule 1 have been satisfied following the filing of the petition or affidavit.
3. The Clay Circuit Court shall not conduct any paternity hearings regarding custody or visitation until the requirements in Rule 1 have been satisfied following the filing of a petition or affidavit.
4. The Courts reserve the right to waive the requirements of Rule 1, 2 and 3 if clear and convincing evidence demonstrates that the best interests of the child or children would be better served.
5. Each party shall be responsible for the individual costs of the program.
6. These rules shall apply to all applicable petitions for dissolution of marriage, petitions for modification, affidavits charging contempt and all paternity actions filed on May 15, 1996 and thereafter.

**LR11-CR12-1      ASSIGNMENT AND REASSIGNMENT OF  
CRIMINAL CASES**

1. All criminal cases shall be equally and non-discriminatorily assigned to the Clay Circuit and Superior Courts.
2. Once a criminal case is assigned, it may not be reassigned to another court if it is re-filed based on the same underlying incident.
3. In the event reassignment of a case arises under Indiana Criminal Rule 12, the Judge of the Clay Circuit Court shall equally and randomly appoint one of the following judges:
  - A. Barbara Brugnaux
  - B. Michael Eldred
  - C. Matthew Headley
  - D. Sam Swaim
  - E. Robert Lowe
  - F. Frank Nardi
  - G. J. Blaine Akers
4. In the event reassignment of a case arises under Indiana Criminal Rule 12, the Judge of the Clay Superior Court shall equally and randomly appoint one of the following judges:
  - A. Barbara Brugnaux
  - B. Michael Eldred
  - C. Matthew Headley
  - D. Sam Swaim
  - E. Robert Lowe
  - F. Frank Nardi
  - G. David Bolk
  - H. Joseph D. Trout
5. The Judges of Clay Circuit and Superior Court shall meet in January of each year to review each court's caseload and to revise this rule if deemed advisable.

## LR11-CR-00-1 MINIMUM CRIMINAL BAIL SCHEDULE

A. Standard minimum bail set in criminal cases shall be as follows:

<u>FELONY CLASSIFICATION</u>	<u>AMOUNT</u>
A	\$50,000
B	\$25,000
C	\$10,000
D	\$ 7,000

<u>MISDEMEANOR CLASSIFICATION</u>	<u>AMOUNT</u>
A OVWI and BAC	\$ 7,000
A	\$ 5,000
B	\$ 3,000
C	\$ 3,000

B. The Court may fix a higher or lower bail upon the showing of appropriate circumstances. All bail fixed pursuant to this schedule shall be reviewed upon motion of any party.

C. Any person charged with a class C or D Felony, or a Misdemeanor who are found:

- 1) To have close ties to the community;
- 2) Not to have been previously convicted of a felony or misdemeanor; within the past five (5) years; and
- 3) Not presently on bond, parole or probation for any other offenses;

Shall be entitled to release upon posting a 10% cash bond in the defendant's name with the Clerk of the Court.

D. The Sheriff of Clay County has the discretion, under circumstances he deems appropriate, to reduce the amount of bond or release defendant on his own recognizance; but under no circumstances shall a defendant charged with an alcohol-related offense be released before his blood alcohol level is less than .08% pursuant to I.C. 35-33-1-6.

E. No property bonds shall be accepted or allowed. Surety bonds shall not be accepted or allowed unless prior approval is granted by the Court.

## **LR11-JR2-1            JURY SELECTION AND JURY ADMINISTRATOR**

Clay Circuit Court and Clay Superior Court adopt the two-tier notice and summons procedure in Indiana's Jury Rule 4(b), and pursuant to Indiana Jury Rule 2 appoint the Clerk of the Clay Circuit and Superior Court as Clay County Jury Administrator.

## **LR11-TR5-1            SERVICE OF PROCESS IN THE CLAY CIRCUIT AND SUPERIOR COURTS**

The Clerk of the Clay Circuit and Superior Courts shall issue initial summons in pro se small claims, pro se dissolutions of marriage, and pro se proceedings supplemental to execution exclusively by certified mail, return receipt requested. Further the Clerk shall issue alias summons in such cases to an address different from the initial exclusively by certified mail, return receipt requested. The Clerk shall also issue any alias summons to the initial address to be served by the Clay County Sheriff's Department. Either Judge may direct the Clerk to vary from this order in any particular case.

## **LR11-TR5-2            PLEADING FILINGS IN THE CLAY CIRCUIT AND SUPERIOR COURTS**

The Clerk of the Clay Circuit and Superior Courts shall receive for filing all pleadings on all court matters, enter same onto the Chronological Case Summary, and distribute to the respective Courts all filed pleadings and Orders in a timely fashion, and scan all pleadings. Either Judge may direct the Clerk to vary from this procedure in any particular case.

## **LR11-AR15-1           COURT REPORTER SERVICES**

SECTION ONE. DEFINITIONS. The following definitions shall apply under this local rule:

(1) A *Court Reporter* is a person who is specifically designated by a court to perform the official court reporting services for the court including preparing a transcript of the record.

- (2) *Equipment* means all physical items owned by the court or other governmental entity and used by a court reporter in performing court reporting services. Equipment shall include, but not be limited to, telephones, computer hardware, software programs, disks, tapes, and other device used for recording and storing, and transcribing electronic data.
- (3) *Work space* means that portion of the court's facilities dedicated to each court reporter, including but not limited to actual space in the courtroom and any designated office space.
- (4) *Page* means the page unit of transcript which results when a recording is transcribed in the form required by Indiana Rule of Appellate Procedure 7.2.
- (5) *Recording* means the electronic, mechanical, stenographic or other recording made as required by Indiana rule of Trial Procedure 74.
- (6) *Regular hours worked* means those hours which the court is regularly scheduled to work during any given workweek. Depending on the particular court, these hours may vary from court to court within the county but remain the same for each workweek.
- (7) *Gap hours worked* means those hours worked that are in excess of the regular hours worked but hours not in excess of forty (40) hours per work week.
- (8) *Overtime hours worked* means those hours worked in excess of forty (40) hours per workweek.
- (9) *Work week* means a seven (7) consecutive day week that consistently begins and ends on the same days throughout the year, i.e. Sunday through Saturday, Wednesday through Tuesday, Friday through Thursday.
- (10) *Court* means the particular court for which the court reporter performs services. Court may also mean all of the courts in Clay County.
- (11) *County indigent transcript* means a transcript that is paid for from county funds and is for the use on behalf of a litigant who has been declared indigent by a court.
- (12) *State indigent transcript* means a transcript that is paid for from state funds and is for the use on behalf of a litigant who has been declared indigent by a court.
- (13) *Private transcript* means a transcript, including but not limited to a deposition transcript that is paid for by a private party.

## Section Two. Salaries and Per Page Fees.

- (1) Court Reporters shall be paid an annual salary for time spent working under the control, direction and direct supervision of their supervising court during any regular work hours, gap hours or overtime hours. The supervising court shall enter into a written agreement with the court

reporters that outlines the manner in which the court reporter is to be compensated for gap and overtime hours; i.e. monetary compensation or compensatory time off regular work hours.

(2) The maximum per page fee a court reporter may charge for the preparation of a county indigent transcript shall be three dollars fifty cents (\$3.50); the court reporter shall submit a claim directly to the county for the preparation of any county indigent transcripts.

(3) A minimum fee up to \$35.00 per transcript for small transcripts.

(4) Index and Table of Contents pages should be charged at the per page rate being charged for the rest of the transcript.

(5) An additional labor charge approximately the hourly rate based upon the court reporter's annual court compensation may be charged for time spent binding the transcript and the exhibit binders.

(6) A reasonable charge for office supplies required and utilized for the binding and electronic transmission of the Transcript pursuant to Indiana Rules of Procedure 28 and 29, is permissible; the costs for these supplies should be determined pursuant to a Schedule of Transcript Supplies which should be established and published annually by the judge or judges of the county.

(7) The maximum per page fee a court reporter may charge for the preparation of a state indigent transcript shall be three dollars fifty cents (\$3.50).

(8) The maximum per page fee a court reporter may charge for the preparation of a private transcript shall be three dollars fifty cents (\$3.50).

(9) Each court reporter shall report, at least on an annual basis, all transcript fees received for the preparation of either county indigent, state indigent or private transcripts to the Indiana Supreme Court Division of State Court Administration. The reporting shall be made on forms prescribed by the Division of State Court Administration.

### Section Three. Private Practice.

(1) If a court reporter elects to engage in private practice through the recording of a deposition and/or preparing of a deposition transcript, and the court reporter desires to utilize the court's equipment, work space and supplies, and the court agrees to the use of the court equipment for such purpose, the court and the court reporter shall enter into a written agreement which must, at a minimum, designate the following:

- (a) The reasonable market rate for the use of equipment, workspace and supplies.
- (b) The method by which records are to be kept for the use of equipment, work space and supplies; and
- (c) The method by which the court reporter is to reimburse the court for the use of the equipment, workspace and supplies.

(2) If a court reporter elects to engage in private practice through the recording of a deposition and/or preparing of a deposition transcript, all such private practice work shall be conducted outside of regular working hours.

## **LR11-PR**

## **PROBATE RULES**

### **LR11-PR- 1**

### **NOTICE**

1.1 Whenever notice by publication and/or written notice by U.S. Mail is required to be given, the attorney shall prepare such notice and shall ensure that such notice is properly published and/or served. In all aspects, the notice shall comply with all statutory requirements. It shall be the attorney's responsibility to ascertain and provide adequate proof thereof regarding whether notice was properly served prior to bringing a matter to the Court.

1.2 Copies of Petitions shall be sent with all notices where the hearing involved arises from the matters contained in the Petition.

### **LR11-PR- 2**

### **FILING OF PLEADINGS**

2.1 When pleadings are filed by mail or left with the Court for filing, a self-addressed, stamped envelope shall be included for return of documents to the attorney, unless the attorney is local and has a designated receptacle for such filing in the Circuit Court for use by the Clerk of the Court for this purpose.

2.2 All attorneys shall submit a sufficient number of Orders for all proceedings, except when expressly directed otherwise by the Court.

2.3 All initial pleadings filed in an Estate shall contain the attorney's name, address, telephone, and Attorney's Registration Number.

### **LR11-PR- 3**

### **BOND**

3.1 In Estates and Guardianships, the fiduciary, prior to the issuance of Letters, shall file a Corporate Surety Bond, in an amount set by the Court, taking into account the following factors:

A. That the Testator, under the terms of the Will expresses an intention that Bond be waived.

B. That the Fiduciary is an heir or legatee of the Estate, or the sole heir or legatee.

C. Where all heirs or legatees have filed a written request with the Court that the Fiduciary serve without bond.

D. Whether the Estate is supervised or unsupervised.



E. No Bond shall be required in any supervised Estate or Guardianship in which a Corporate Banking Fiduciary qualified by law as such, is either the Fiduciary or one of several Co-Fiduciaries.

3.2 In lieu of a Bond as required by rule 3.1, a Fiduciary may restrict transfer of all or part of the Estate or Guardianship liquid assets by placing those assets in a federally-insured financial institution with the following restriction placed on the face of the account or document:

**NO PRINCIPAL OR INTEREST SHALL BE  
WITHDRAWN WITHOUT WRITTEN ORDER OF  
THE CIRCUIT COURT OF CLAY COUNTY,  
INDIANA.**

3.3 All Petitions to open an Estate or Guardianship shall set forth the probable value of the personal property, plus the estimated annual rents and profits to be derived from the property in an Estate or Guardianship, if such information is readily available to the Petitioner, Personal Representative or the attorney for the Estate.

#### **LR11-PR- 4                      INVENTORY**

An Inventory shall be filed by the Fiduciary in al Estate and Guardianships as follows: Estates (supervised and unsupervised), within sixty (60) days; Guardianships within ninety (90) days of permanent Guardians and within thirty (30) days for temporary Guardians. All times relate to the date of appointment of the Fiduciary.

#### **LR11-PR- 5                      REAL ESTATE**

5.1 In all Supervised Estates and Guardianships in which real estate is to be sold, the personal representative shall have filed an Inventory and Appraisement listing the fair market value of the real estate to be sold.

5.2 All Deeds submitted to the Court for approval in either Estate or Guardianship proceedings shall be signed by the Fiduciary and the signature notarized prior to its submission. All such Deeds shall be submitted with the Report of Sale of Real Estate.

5.3 In all Unsupervised Estates in which real estate is distributed to heirs/devisees, the Deed shall be recorded with the County Recorder by the personal representative prior to delivery to the Grantee(s), and at the Estate's expense.

**LR11-PR- 6****ACCOUNTINGS**

6.1 All Accountings to the Court shall contain an itemized statement of assets on hand.

6.2 All Accountings to the Court shall follow the prescribed statutory format. Informal, handwritten statements and/or Accountings will not be accepted. Transactional Accountings are acceptable, provided the Fiduciary is a State or Federally chartered Financial Institution, and that such Institution can provide details regarding said Accountings, if required by the Court.

6.3 All Court Costs shall be paid on or before any hearing date on any Accounting.

6.4 In lieu of filing vouchers with the Final Account, a statement shall be made in the Final Account, or by separate Affidavit, that the vouchers are in the possession of the personal representative, and are available for examination by interested parties.

**LR11-PR- 7****FEES OF ATTORNEYS AND FIDUCIARIES**

7.1 Attached hereto, and made a part hereof, are the Court's Fee Guidelines and Rules for Fee Determination for Estates and Guardianships.

Fees charged by Attorneys and/or Fiduciaries shall generally not exceed those set forth in the Guidelines. Fees set forth in the attached Guidelines could be high, or low, for a given Estate or Guardianship. In considering whether a particular fee charged is too high, or too low, the following factors are considered relevant:

A. The time and labor required; the novelty, complexity, or difficulty of the questions involved; the skill required to perform the services properly, and shall include a determination as to how much of the Attorney's time was devoted to legal matters and how much of it was devoted to ministerial functions.

B. The nature and extent of the responsibilities assumed by the Attorney, and the results obtained, shall include the considerations of the identity of the personal representative and the character of the Probate and non-Probate transferred assets.

C. The sufficiency of assets properly available to pay for legal services, and shall consider whether the Attorney's duties are expanded by the existence of non-Probate assets because of their inclusion for Tax purposes, both Federal and State.

D. The timeliness with which the necessary services are performed consistent with Statutory requirements, the Court's Rules of Procedure, and the Rules of Professional Conduct applicable thereto.

In considering all of these factors, all Attorneys are urged to discuss their fee and that of the Personal Representative at the time they are retained, in all Probate matters.

7.2 The Court reserves the right to approve or disapprove any fee contracts.

#### **LR11-PR- 8                                      UNSUPERVISED ESTATES**

8.1 Whenever deemed practical, Unsupervised Administration shall be used.

#### **LR11-PR- 9                                      GUARDIANSHIPS**

9.1 If guardianship is predicated upon incapacity, other than minority, or if the alleged incapacitated person will not be produced in Court, a Guardian Ad Litem shall be appointed, unless (1) said person will be represented by counsel, or (2) represented by another person acting under a properly executed Power of Attorney, which Power was given before the onset of the incapacity.

If the incapacity is predicated solely upon minority, and any of the provisions of I.C. 29-3-2-3(b) will not be met, a Guardian Ad Litem shall be appointed.

#### **LR11-PR- 10                                      APPLICABILITY**

If at any time a Statutory provision or Rule of the Indiana Supreme Court is adopted, which conflicts with these Local Rules, the Local Rules shall be deemed to have been superseded as to any such portion in conflict with said other statutory provisions or Supreme Court Rules.

I. ADMINISTRATION:

Gross Estate services are considered to normally include; Opening of the estate; qualifying the personal representative; preparing and filing the Inventory; paying Claims; collecting assets; preparing and filing non-extraordinary petitions; sales of real and personal property; preparing and filing the Inheritance Tax Schedule, obtaining the Court Order thereon, and paying the taxes; preparing and filing the Final Report; obtaining Order approving same; distributing assets; obtaining discharge of personal representative; and preparing and serving all notices on interested parties and readily ascertainable creditors throughout the proceedings. This list shall not be considered to be exclusive. Fees shall be based upon percentage of all inventoried items at appraised values, and all times not subject to administration at reported values as follows:

## A. Gross Estate:

Up to \$	100,000.00, not to exceed .....	6%
Next \$	200,000.00, not to exceed.....	4%
Next \$	700,000.00, not to exceed.....	3%
Over \$	1,000,000.00, not to exceed.....	1%

## B. Extraordinary Services:

For services not encompassed by the above, additional reasonable Attorney fees may be allowed, taking into consideration the nature and complexity of said services, the Attorney's expertise, the result of said services, and any other relevant information. If additional fees are requested, a fee petition shall be filed with the Court setting forth the services, the time involved, and relevant information. All fee petitions must specifically set forth the fee requested for both the Personal Representative and the Attorney, and will be set for hearing. If all interested parties sign a waiver and consent stating that they have been advised the additional fee request exceeds the Court's guidelines, and that the services, as detailed, are extraordinary, the Court may not require a hearing.

## C. Miscellaneous Services:

When administration as explained in A above is not involved, the following shall apply, to wit:

Probate Will only	\$ <u>250.00</u>
Small Estate Settlement Procedure	\$ <u>Hourly Rate</u>

Indiana Inheritance Tax Determination maximum of one (1) Percent of gross assets shown in Return Federal Estate Tax Determination, maximum of one (1) Percent of gross assets shown in Return

In any Estate proceedings, if a Federal Estate Tax Return is required, this shall be considered as extraordinary services for which a fee of not to exceed one (1) percent of the Gross Estate may be added. Should this Return be prepared by a tax preparer, other than the attorney or staff of said attorney, the fee to be charged should first be discussed and agreed to if within said Guidelines. If in excess of said Guidelines, before contracting for such services, the requisite Petition shall be filed with the Court, and an appropriate Order entered.

## II PERSONAL REPRESENTATIVE FEES

- A. PROFESSIONAL:  
Their applicable reasonable rate to be reviewed in light of all prevailing Circumstances.
- B. NON-PROFESSIONAL:  
An amount NOT in excess of one-half (1/2) of the attorney fee.
- C. ATTORNEY:  
When the attorney also serves as the personal representative, an additional amount NOT in excess of one-third (1/3) of the attorney fee may be allowed.

## III. WRONGFUL DEATH ADMINISTRATION:

Fees not to exceed:

Settlement prior to filing.....	25%
Settlement after filing and prior to trial .....	33 1/3%
Trial.....	40%
Appeal, or extra work.....	50%

**LR11-AR- 1      REPEAL OF LOCAL RULE INVOLVING  
SMALL CLAIMS INVOLVOING FIRST  
FINANCIAL CORPORATION**

The Clay County Local Rule Regarding Small Claims Involving First  
Financial Corporation and Its Subsidiaries effective July 19, 1995 under  
Cause No. 11C01-9507-MI-219 and 11D01-9507-MI-197 is hereby repealed.

RULE LR11-AR-01-02

CASELOAD ALLOCATION

- A. ANNUAL REVIEW. The judges of the Clay Circuit Court and the Clay Superior Court shall meet annually to review the weighted caseload statistics of each court and to comply with orders of the Indiana Supreme Court concerning case assignments.
- B. CLAY CIRCUIT COURT. The following cases shall be filed exclusively with the Clay Circuit Court:
1. Juvenile
  2. Adoption
  3. Guardian
  4. Estates
- C. CLAY SUPERIOR COURT. The following cases shall be filed exclusively with the Clay Superior Court:
1. Small Claims
  2. Infractions
  3. Ordinance Violations pertaining to traffic offenses
  4. All cases filed by the Terre Haute law firm formerly known as Wagner, Crawford, Gambill & Trout.
- D. CONCURRENT ASSIGNMENT: The Clay Circuit Court and the Clay Superior Court shall receive assignments of all other matters, including:
1. Civil Commitments
  2. Criminal offenses of all types, except if the Defendant already is currently on probation in Clay County, then the new criminal case involving the same Defendant (probationer) shall be filed with the Court supervising the probationer, as well as the Petition to Revoke Probation, if any. If the Defendant is not currently on probation, then the new criminal case shall be assigned randomly as explained below. Also, if there is another new criminal charge filed under a separate cause number when the same Defendant has another criminal case pending, then the new criminal case shall be assigned to the same Court in whom the previously filed case is pending.
  3. Civil
  4. Criminal cases transferred from other counties
  5. Protective Orders

from the Clay County Clerk as follows:

1. Random Draw: An opaque container holding eight (8) separate pieces marked “C” for Circuit and “S” for Superior will be kept in the Clerk’s Office. When a case is filed, the Clerk will randomly remove a piece from the container. If the piece is marked “C” the case will be filed with Circuit Court. If the piece is marked “S” the case will be filed with Superior Court. A piece removed from the container will not be returned to the container until all sixteen pieces have been removed. Then all sixteen pieces will be returned to the container. Also, the Clerk shall remove a properly designated piece from the container for those situations when a new criminal case is filed while the same Defendant has any other criminal case pending, pursuant to the procedure described above. Further, an “S” piece shall be removed for all cases filed by the law firm formerly known as Wagner, Crawford, Gambill and Trout for which the Clay Superior Court has exclusive jurisdiction.
2. PROBATION TRANSFER, SUBPOENA DUCES TECUM AND SEARCH WARRANT CASES. Notwithstanding the above, any case that is a probation transfer from another county, or a case in which the State of Indiana is filing a motion for a subpoena duces tecum or a search warrant, the Clerk will use a separate opaque container holding an equal number of pieces for the Circuit and Superior Courts and shall file the case randomly consistent with the procedure set forth above—Random Draw.
3. TRANSFER. The judges of either court, by appropriate order entered in the Record of Judgments and Orders, may transfer and reassign any case, subject to the acceptance by the receiving Court.
4. REFILINGS. When the State of Indiana dismisses a case and chooses to refile that case, the case shall be assigned to the Court from whom the dismissal was taken.
5. CRIMINAL RULE 12 REASSIGNMENT. The Courts shall comply with LR11-CR12-1 as to reassignment of cases under Criminal Rule 12. However, in the event no judge is available for assignment or reassignment under LR11-CR12-1, then such case shall be assigned to the Indiana Supreme Court for appointment of a special judge.